FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Second Appeal No. 173 of 2006
(The N.I.T. Vs. Ramchandra Shankarrao Ramteke)

Appeal / Application No. / Writ petition — District : of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mr. R.O. Chhabra, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 2nd August, 2007

Heard Shri Chhabra for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for declaration that the notice issued by the defendant to the plaintiff on 17/8/1998 was illegal and unauthorised. It was pleaded by the plaintiff that he was the owner of Plot No. 29 and had purchased the same by a registered sale deed dated 18/1/1997. After the purchase of the land when the plaintiff started construction, he received a notice from the defendant under Section 90(h)(3) of the N. I. T. Act thereby directing the plaintiff to remove the encroachment within a period of three days. The plaintiff, therefore, instituted the suit for the aforesaid declaration.

The defendant filed its written statement and denied the claim of the plaintiff. It was

pleaded by the defendant with the plaintiff had not joined the Society from whom the plaintiff had purchased the plot, as defendant to the suit. According to the defendant- N.I.T., the plaintiff had made construction over the land without obtaining prior permission from the defendant. The defendant lastly pleaded that it was incumbent on the plaintiff to have issued a notice under Section 115 of the N.I.T. Act, prior to the institution of the suit and in the absence of the same, the suit is not maintainable.

The trial Court, after appreciating the evidence tendered by the parties, held that the plaintiff had proved that the construction made by the plaintiff on the plot was legal. The Court further declared that the notice issued by the defendant on 17/8/1998 was illegal and the suit was not bad for want of statutory notice under Section 115 of the N.I.T. Act.

The appellant/defendant filed an appeal against the judgment of the trial Court. The first appellate Court, however, by the judgment dated 20th August, 2005, dismissed the appeal filed by the defendant and confirmed the findings recorded by the trial Court. The appellate Court observed that the action of the N.I.T. was not in conformity with the provisions of Nagpur Improvement Trust Act as the suit plot did not fall within the

jurisdiction of the N.I.T. The Court further observed that the defendant did not prove that the plaintiff had encroached upon any adjoining land belonging to the defendant.

The findings recorded by both the Courts are pure findings of fact based on the proper appreciation of the material evidence on the record. The findings do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

RMP